

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86034124
LAW OFFICE ASSIGNED	LAW OFFICE 116
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/86034124/large
LITERAL ELEMENT	VIEWPOINTE
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_20416137162-20160823143304798362_.MAL_Response_and_REconsideration_request_VIEWPOINTE_argument.pdf
CONVERTED PDF FILE(S) (5 pages)	\\TICRS\EXPORT16\IMAGEOUT16\860\341\86034124\xml10\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\860\341\86034124\xml10\RFR0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\860\341\86034124\xml10\RFR0004.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\860\341\86034124\xml10\RFR0005.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\860\341\86034124\xml10\RFR0006.JPG
DESCRIPTION OF EVIDENCE FILE	Argument in response to Office Action
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	009
DESCRIPTION	
Computer hardware and software consisting of mobile computing and operating platforms that allows for collection and management of emergency location and 911 data for use by emergency management/response personnel to interact, real-time call and incident information, call coordination, instant messaging, graphical viewing of event and unit locations, event monitoring, community status; Computer hardware and software consisting of mobile computing and operating platforms that allows for support of live, video streaming from fixed and mobile cameras and community-based alerting systems	
FILING BASIS	Section 1(a)

FIRST USE ANYWHERE DATE	At least as early as 12/09/2011
FIRST USE IN COMMERCE DATE	At least as early as 12/09/2011
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	009
TRACKED TEXT DESCRIPTION	
<p>Computer hardware and software consisting of mobile computing and operating platforms that allows for collection and management of emergency location and 911 data for use by emergency management/response personnel to interact, real-time call and incident information, call coordination, instant messaging, graphical viewing of event and unit locations, event monitoring, community status; Computer hardware and software consisting of mobile computing and operating platforms that allows for collection and management of emergency location and 911 data for use by emergency management/response personnel to interact, real-time call and incident information, instant messaging, graphical viewing of event and unit locations, event monitoring, community status; Computer hardware and software consisting of mobile computing and operating platforms that allows for support of live, video streaming from fixed and mobile cameras and community-based alerting systems</p>	
FINAL DESCRIPTION	
Computer hardware and software consisting of mobile computing and operating platforms that allows for collection and management of emergency location and 911 data for use by emergency management/response personnel to interact, real-time call and incident information, instant messaging, graphical viewing of event and unit locations, event monitoring, community status; Computer hardware and software consisting of mobile computing and operating platforms that allows for support of live, video streaming from fixed and mobile cameras and community-based alerting systems	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/09/2011
FIRST USE IN COMMERCE DATE	At least as early as 12/09/2011
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Holly Coldiron/
SIGNATORY'S NAME	Holly Coldiron
SIGNATORY'S POSITION	Attorney of record, North Carolina bar member
SIGNATORY'S PHONE NUMBER	9198294287
DATE SIGNED	08/23/2016
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Tue Aug 23 14:40:05 EDT 2016
TEAS STAMP	USPTO/RFR-XXX.XX.XXX.XXX- 20160823144005660259-8603 4124-550b631121c16bd672f4 17d3dfd3463496ba6f4e7a806 cec8412beda043cf6f-N/A-N/

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PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **86034124** VIEWPOINTE(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/86034124/large>) has been amended as follows:

EVIDENCE

Evidence in the nature of Argument in response to Office Action has been attached.

Original PDF file:

[evi_20416137162-20160823143304798362 . MAL Response and REconsideration request VIEWPOINTE argument.pdf](#)

Converted PDF file(s) (5 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 009 for Computer hardware and software consisting of mobile computing and operating platforms that allows for collection and management of emergency location and 911 data for use by emergency management/response personnel to interact, real-time call and incident information, call coordination, instant messaging, graphical viewing of event and unit locations, event monitoring, community status; Computer hardware and software consisting of mobile computing and operating platforms that allows for support of live, video streaming from fixed and mobile cameras and community-based alerting systems

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/09/2011 and first used in commerce at least as early as 12/09/2011 , and is now in use in such commerce.

Proposed:

Tracked Text Description: ~~Computer hardware and software consisting of mobile computing and operating platforms that allows for collection and management of emergency location and 911 data for use by emergency management/response personnel to interact, real-time call and incident information, call coordination, instant messaging, graphical viewing of event and unit locations, event monitoring, community status;~~ [Computer hardware and software consisting of mobile computing and operating platforms that allows for collection and management of emergency location and 911 data for use by emergency management/response personnel to interact, real-time call and incident information, instant messaging, graphical viewing of event and unit locations, event monitoring, community status;](#) Computer hardware and software consisting of mobile computing and operating platforms that allows for support of live, video streaming from fixed and mobile cameras and community-based alerting systems

Class 009 for Computer hardware and software consisting of mobile computing and operating platforms that allows for collection and management of emergency location and 911 data for use by emergency management/response personnel to interact, real-time call and incident information, instant messaging, graphical viewing of event and unit locations, event monitoring, community status; Computer hardware and software consisting of mobile computing and operating platforms that allows for support of live, video streaming from fixed and mobile cameras and community-based alerting systems

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/09/2011 and first used in commerce at least as early as 12/09/2011 , and is now in use in such commerce.

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Holly Coldiron/ Date: 08/23/2016

Signatory's Name: Holly Coldiron

Signatory's Position: Attorney of record, North Carolina bar member

Signatory's Phone Number: 9198294287

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86034124

Internet Transmission Date: Tue Aug 23 14:40:05 EDT 2016

TEAS Stamp: USPTO/RFR-XXX.XX.XXX.XXX-201608231440056

60259-86034124-550b631121c16bd672f417d3d

fd3463496ba6f4e7a806cec8412beda043cf6f-N

/A-N/A-20160823143304798362

RESPONSE TO FINAL OFFICE ACTION AND REQUEST FOR RECONSIDERATION

This is in Response to Final Office Action dated February 25, 2016, which issued in connection with the application for the mark VIEWPOINTE, Ser. No. 86/034,124.

Applicant's Trademark

Applicant seeks registration on the Principal Register for the mark VIEWPOINTE covering the following goods (as amended)

for "Computer hardware and software consisting of mobile computing and operating platforms that allows for collection and management of emergency location and 911 data for use by emergency management/response personnel to interact, real-time call and incident information, ~~call coordination~~, instant messaging, graphical viewing of event and unit locations, event monitoring, community status; Computer hardware and software consisting of mobile computing and operating platforms that allows for support of live, video streaming from fixed and mobile cameras and community-based alerting systems" in International Class 009.

The Refusal

The Examining Attorney has issued a Final Action refusing registration of Applicant's Mark VIEWPOINTE on the grounds that the mark creates a likelihood of confusion with:

- U.S. Registration No. 3741750 for the mark SEQUEL VIEWPOINT, and
- U.S. Registration No. 3456849 for the mark VERTICAL WAVE VIEWPOINT.

Applicant respectfully reiterates its earlier arguments that based on the differences in the marks and the goods associated with the Applicant's mark and those of each of the Registrants, confusion is not likely. Applicant further requests reconsideration and responds to the outstanding action as set forth below.

Argument

Registrant 1 U.S. Reg. No. 3741750 **SEQUEL VIEWPOINT** for "*computer software for accessing, organizing, presenting and displaying data*" in Class 009. (Registration 1)

Applicant hereby requests that the Examining Attorney reconsider and withdraw her refusal of registration based on Registration 1. Registration 1 was registered on January 26, 2010 and accordingly a Section 8 affidavit of continued use or Section 71 affidavit of excusable nonuse must be filed between the 5th and 6th year after the date of registration, or in this case between January 26, 2015 and January 26, 2016. Registrant 1 has failed to file a timely affidavit or declaration of continued use or excusable nonuse on or before January 26, 2016, nor did Registrant 1 file such affidavit before the end of the 6-month grace period which expired on July 26, 2016. (See attached copy of the printout of the USPTO TESS database at Exhibit A) Applicant therefore submits that Registration 1 is no longer existing and valid and is subject to

cancellation in due course, in respect of which Applicant respectfully requests that the Examining Attorney withdraw its refusal of registration under Section 2(d) with respect to Registration 1

Alternatively, Applicant hereby requests that the Examining Attorney reconsider her refusal of registration based on Registration 1 and pursuant to 37 C.F.R. 2.67 and TMEP 716 suspend Applicant's application. Registration 1 was registered on January 26, 2010 and accordingly a Section 8 affidavit of continued use or Section 71 affidavit of excusable nonuse must be filed between the 5th and 6th year after the date of registration, or in this case between January 26, 2015 and January 26, 2016. Registrant 1 failed to file a timely affidavit or declaration of continued use or excusable nonuse on or before January 26, 2016 and has not filed such affidavit before the end of the 6-month grace period which expired on July 26, 2016. Pursuant to Section 716.02(e) of the Trademark Manual of Examining Procedure "*If the examining attorney is ready to issue a final refusal of registration under §2(d), and the cited registration is in the grace period for filing a §8 or §71 affidavit or §9 renewal application, the examining attorney must suspend action pending a determination of whether the registrant timely files, and the USPTO accepts, the §8 or §71 affidavit and/or whether the registration is renewed.*" As Registration 1 was in the grace period for filing a Section 8 or Section 7 affidavit on February 25 2016, the date of the issuance of the Final Office Action, Applicant respectfully submits that action on Applicant's application should have been suspended pending determination of whether Registration 1 was renewed. Applicant therefore requests that action on Applicant's application be suspended pending cancellation or other disposition of Registration 1.

Registrant 2 US Reg. No 3456849 VERTICAL WAVE VIEWPOINT for "*Intuitive computer based call handling and management software which provides telecommunication system users the ability to place, manage, including voice mail and voice messaging functionalities, and transfer calls and manage contacts through a software interface*" in Class 009. (Registration 2)

The Examining Attorney has refused registration of Applicant's application under Section 2(d) of the Trademark Act based on a likelihood of confusion with Registration 2. The Examining Attorney has indicated that Registrant 2's "call handling and management software" could include certain of Applicant's goods as originally identified, namely for "call coordination". In connection with this response, Applicant has amended the description of goods to remove the goods to which the refusal pertains, specifically, "call coordination". In view of this amendment, Applicant respectfully submits that there is no likelihood of confusion between Applicant's mark and Registration 2. Application hereby requests that the Examining Attorney reconsider the refusal of registration of the Applicant's Application and requests that the refusal of registration based on Registration 2 be withdrawn.

Summary

Based on the amendment to the Applicant's description of goods and the arguments above, Applicant respectfully requests that the Examining Attorney reconsider its refusal of registration under Section 2(d) of the Trademark Act based on Registrations 1 and 2 and that the application be approved for publication, or in the alternative, that the refusal of registration based on a

likelihood of confusion with Registration 2 be withdrawn and further action on the application be suspended pending cancellation or other disposition of Registration 1.



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SEQUEL VIEWPOINT

Word Mark

SEQUEL VIEWPOINT

Goods and Services

IC 009. US 021 023 026 036 038. G & S: computer software for accessing, organizing, presenting and displaying data. FIRST USE: 20060927. FIRST USE IN COMMERCE: 20060927

Standard Characters Claimed

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Serial Number

77625032

Filing Date

December 2, 2008

Current Basis

1A

Original Filing Basis

1A

Published for Opposition

November 10, 2009

Registration Number

3741750

Registration Date

January 26, 2010

Owner

(REGISTRANT) Help/Systems, LLC LIMITED LIABILITY COMPANY DELAWARE 6533 Flying Cloud Drive Eden Prairie MINNESOTA 55344

Assignment Recorded

ASSIGNMENT RECORDED

Attorney of Record

David West

Disclaimer

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SEQUEL" APART FROM THE MARK AS SHOWN

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live/Dead Indicator

LIVE

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